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6 Steve Weera Tonasut, Emil Assentato  
and Tax Deed Enterprises, LLC,  
7 a Delaware limited liability company

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9  
10 UNITED STATES DISTRICT COURT  
11  
12 CENTRAL DISTRICT OF CALIFORNIA  
13  
14 WESTERN DIVISION

15 CLINTON BROWN,  
16 PLAINTIFF,  
17  
18 VS.  
19  
20 EMIL ASSENTATO, TAX DEED  
ENTERPRISES LLC, STEVE WEERA  
TONASUT TRUST,  
21  
22 DEFENDANTS.

23 Case No.:LACV23-02972-MEMF(KSx)

24 REPLY TO OPPOSITION TO  
MOTION TO DISMISS BY  
DEFENDANT TONASUT

25 DATE: AUGUST 24, 2023  
TIME: 10:00 A.M.  
26 CTRM: 8B

27 Plaintiff fails to show that his complaint meets the pleading standards required to state a  
claim for a federal securities law violation. Nor do the allegations show a basis for federal  
jurisdiction to exist. (Procedurally, the opposition was filed two months after the Motion to  
Dismiss, so it need not be considered, in the Court's discretion. *C.D. Cal. L.R. 7-12*).

28 1. NO STANDING EXISTS, AND NO CLAIM IS STATED.

Plaintiff's opposition to justify the sufficiency of allegations merely sets the same forth a  
quote of the same on pages 2-3 of his Opposition, Doc. 30, filed 07/23/23. To call these  
allegations scanty is generous. They do not pass muster.

1 Plaintiff makes no attempt to show that the statutes and case law on a federal securities claim  
 2 are satisfied, making no arguments except bald assertions, and conclusions, merely making string  
 3 cites without application. No support to Plaintiff arises from his string citations. Nor did he  
 4 attempt to distinguish a single one of the controlling authorities cited by the motion..  
 5 Furthermore, Plaintiff does not propose to make any additional allegations if he is allowed to  
 6 amend that would suffice to satisfy the heightened pleading standard applicable here.

7       Altogether, Plaintiff's position is upside-down and backwards. The allegations and  
 8 judicial notice facts show that no security was issued to him, and no investment contract was  
 9 offered to him, nor purchased by him. His allegations and judicial notice documents show:  
 10 Plaintiff issued to Tonasut a promissory note by The Atlas LLC and himself to document a  
 11 purchase money loan taken from defendant Tonasut to buy the real property security, secured by  
 12 a deed of trust issued by The Atlas LLC. This is not a regulated security, nor anything that  
 13 defendant Tonasut "sold" to Plaintiff. Nor is defendant Tonasut's purchase from Atlas LLC a  
 14 15% undivided interest in the security property bought with Tonasut's purchase money loan.

15       Rather, all shows that he is the member-manager with control over The Atlas LLC with  
 16 his 50% interest in it, and that he controls its operations, books, records, and finances. Though he  
 17 complains the LLC is "undercapitalized", that carries no weight. Rather, his position is that "not  
 18 enough money" was put in by defendant Tonasut, who was never a member of Atlas LLC, and  
 19 not enough money put in by the two other defendants, Assentato and Tax Deed Enterprises. The  
 20 only members of the Atlas LLC have always been Plaintiff, Assentato and Tax Deed Enterprises,  
 21 and never defendant Tonasut, who was never a member and sold or bought any interest in Atlas  
 22 LLC.

23       Plaintiff did not "buy" nor invest in an investment contract or a security issued or sold by  
 24 from defendant Tonasut, because defendant Tonasut never offered nor sold any security or  
 25 investment contract to Plaintiff. Plaintiff's "sweat equity" in Atlas LLC, his skill and efforts  
 26 supposedly, is what he invested with the other two members, Assentato and Tax Deed  
 27 Enterprises. And Atla LLC was subject to Plaintiff's his own determination and control—not that  
 28 of the defendant Tonasut. If anything, Plaintiff issued a "security", if one exists here,

1 hypothetically, with defendant Tonasut being a mere lender with a security interest in the Atlas  
 2 LLC real property, with Tonasut later having bought a 15% undivided interest in the real  
 3 property his purchase money loan financed for Atlas LLC.

4 Here, the allegations and judicial notice show the opposite of what Plaintiff maintains is a  
 5 securities law violation. If anything, it is Plaintiff alone who “issued” a security or investment  
 6 contract to defendant Tonasut, a mere secured lender. Plaintiff’s allegations show that he did not  
 7 depend on defendant Tonasut to achieve a commercially viable operation, as Plaintiff was using  
 8 his own business skill and acumen and sweat equity, his labors, as he alleges, for potential profit  
 9 of his Atlas LLC. The defendant Tonasut merely made a purchase money loan for the real  
 10 property bought by Atlas LLC and secured by it for the loan made to buy the real property. If  
 11 federal securities law applies, and if it was violated, it is Plaintiff that violated the law by issuing  
 12 the promissory note for the money lent by defendant Tonasut.

13       2. PLAINTIFF ESTABLISHED THE ATLAS LLC IN HIS OWN CONTROL AS  
 14 MEMBER-MANAGER OWNING 50%, EXPECTING ONLY TO OBTAIN PROFIT  
 15 BASED ON HIS OWN “SWEAT EQUITY”, SHOWING THAT NO FEDERAL  
 16 SECURITIES LAW VIOLATION EXISTS.

17 Plaintiff’s control of the business of the LLC, as member-manager, with control of books  
 18 and records and accounts and activities, means that his interest in the LLC is not an investment  
 19 contract and so not subject to federal securities laws. *Ave. Capital Mgmt. II, L.P. v. Schaden*,  
 20 843 F.3d 876, 884 (10th Cir. 2016) (upheld a motion to dismiss a federal securities claim over an  
 21 LLC interest because of “control . . . preventing characterization of the (LLC) investments as  
 22 investment contracts.”). Furthermore, defendant Tonasut was not a member of the LLC and did  
 23 not sell to Plaintiff an ownership interest in the LLC, never having an interest to sell in it, and no  
 24 allegation claims that defendant Tonasut did.

25 Plaintiff’s ‘sweat equity’ involvement also defeats the claim. *Hardisty v. Moore* (USDC  
 26 SD Cal., 10/9/2012, Battaglia, Anthony J., Dist. Judge, Case No.: 11cv1591 AJB (BLM), p. \*7.  
 27 Plaintiff’s allegations fail the prong that his ‘investment’ is “based on an expectation of profits to  
 28 be derived solely from the efforts of individuals other than the investor.” *Id.*, *Hardisty*, p. \*7,  
 (citing *Deutsch Energy Co. v. Mazur*, 813 F.2d. 1567, 1568 (9th Cir. 1987). In Hardisty, the

1 Plaintiff, a builder, “was to receive ‘sweat equity’ in the company.” In that case, Plaintiff alleged  
 2 that defendant “through fraud and coercion, divested him of his sweat equity in the Project and  
 3 acquired almost all of the ownership in the partnership development. *Id.*, *Hardisty*, at p. \*2. Here,  
 4 Plaintiff’s allegations are upside down and backwards, failing to state a securities claim, just as  
 5 in the *Hardisty*. Plaintiff’s allegations show that he did not, as a matter of law, expect profits  
 6 solely from the efforts of “others”, the others here being defendant Tonasut. Rather, Plaintiff  
 7 alone had control, and his efforts were the basis for his expectation of profits. It was Plaintiff’s  
 8 own ‘sweat equity’ from which Plaintiff hoped to earn a profit. But even if it were not so,  
 9 defendant Tonasut did not offer, issue, or sell a regulated security, being a secured lender only.

10       3. NO SECURITY WAS ISSUED NOR SOLD TO PLAINTIFF.

11       To be regulated under the Securities Act, the interest must meet the definition, and then  
 12 Plaintiff must have “bought”, paid money, for it. Here, in this secured purchase money loan for  
 13 the land bought by Atlas LLC, it and Plaintiff were the ones making, or issuing, the promissory  
 14 note as promisor to defendant Tonasut. (Plaintiff Clinton Brown named himself as the trustee of  
 15 the deed of trust). And Atlas LLC, by Plaintiff’s own signature, granted the deed of trust for the  
 16 benefit of lender and beneficiary, defendant Tonasut. Plaintiff himself bought no property,  
 17 bought no security, bought no interest in a security, bought no investment contract, bought  
 18 nothing that is a security nor investment contract, from defendant Tonasut. Defendant neither  
 19 issued nor offered a security, let alone a defined and regulated security. There simply is no  
 20 regulated security issued by defendant Tonasut to serve as the basis for a claim by Plaintiff.

21       And Plaintiff’s opposition ignores the motion’s cited authorities. He has not discussed  
 22 nor attempted to distinguish these controlling authorities. Here, these are brought forward from  
 23 the motion’s memo of points, for ease of reference, quotations from the points and authorities  
 24 supporting defendant Tonasut’s motion:

25       “Neither a short-term Note secured by small business assets is a subject security, nor is an  
 26 unsecured loan made to the small business, by definition, under the Securities Act. *Reves*  
 27       *v. Ernst Young*, 494 U.S. 56, 65, 110 S. Ct. 945 (1990) (“[T]ypes of notes that are not  
 28 “securities” include . . . the short-term note secured by a lien on a small business or some

1 of its assets, . . ."; "We agree that the items identified by the Second Circuit are not  
 2 properly viewed as "securities""). Moreover, "[a] note given to a lender in the course of  
 3 a commercial financing transaction is not a security." *Amfac Mortgage Corp. v. Arizona*  
 4 *Mall of Tempe, Inc.*, 583, F.2d 426, 434 (9th Cir. 1978).

5 Nor has Plaintiff distinguished the controlling authorities that no constitutional standing  
 6 for him exists on this claim in district court. Again, from the motion's memo of points &  
 7 authorities, and to which Plaintiff has no response:

8 "[T]he irreducible constitutional minimum of standing contains three elements.  
 9 First, the plaintiff must have suffered an "injury in fact" — an invasion of a legally-  
 10 protected interest which is (a) concrete and particularized, . . . ; and (b) "actual or  
 11 imminent, not 'conjectural' or 'hypothetical,'" . . . . Second, there must be a causal  
 12 connection between the injury and the conduct complained of — the injury has to be  
 13 "fairly . . . trace[able] to the challenged action of the defendant, and not . . . th[e] result  
 14 [of] the independent action of some third party not before the court." . . . . Third, it must  
 15 be "likely," as opposed to merely "speculative," that the injury will be "redressed by a  
 16 favorable decision."

17 *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61, 112 S. Ct. 2130 (1992) (internal  
 18 citations omitted). Here, the "first test" is not met, so the second and third are not even  
 19 reached. Nor would the second or third be met here, had the first been met.

20 Thus, Plaintiff has no standing, no injury, no claim, no and no basis for personal  
 21 jurisdiction on this matter exists in this court, so subject matter jurisdiction does not exist.

22 4. NO SECURITIES LAW VIOLATION IS PLEADED.

23 Again, Plaintiff does not distinguish controlling authorities regarding the pleading  
 24 standard, as brought forward here from the motion's points, for ease of reference:

25 "Nor has Plaintiff justified his complaint under the high pleading standards required for  
 26 this case. Again, from the motion: "The court is 'not required to accept as true  
 27 conclusory allegations which are contradicted by documents referred to in the  
 28 complaint.'" *Scripsamerica, Inc. v. Ironridge Global LLC*, 56 F. Supp. 3d 1121, 1136

1 (C.D. Cal. 2014) (quoting *Steckman v. Hart Brewing Inc.*, 143 F.3d 1293, 1295 (9th Cir.  
 2 1998).

3 “The pleading standards for securities law violations is high under Rule 12 and under the  
 4 dual requirements of Rule 9, and the Private Securities Litigation Reform Act (“PSLRA”)  
 5 15 U.S.C. § 78u-4. *Scripsamerica, supra*, at p. 1157 (citing *In re Verifone Holdings, Inc.,*  
 6 *Sec. Litig.*, 704 F.3d 694, 701 (9th Cir. 2012). “Rule 9(b) “provides that the  
 7 ‘circumstances constituting fraud or mistake shall be stated with particularity.’ ” ”  
 8 *Scripsamerica, supra*, at p. 1157.

9 “Plaintiff must plead ‘with particularity’ the time and place of the fraud, the statements  
 10 made and by whom made, an explanation of why or how such statements are false or  
 11 misleading when made, and the role of each defendant in the alleged fraud. *In re*  
 12 *GlenFed, Inc., Securities Litigation*, 42 F.3d 1541, 1547-49 (9th Cir. 1994) (en banc).  
 13 “Generally, a plaintiff must plead the “time, place, and specific content” of allegedly  
 14 fraudulent conduct to satisfy Rule 9(b).” *Swartz v. KPMG LLP*, 476 F.3d 756, 764 (9th  
 15 Cir. 2007). Plaintiff fails to so allege.

16 Again, from the motion’s points, ignored by Plaintiff, and for ease of reference:  
 17 “In 1995, Congress passed the PSLRA, which amended the Securities Exchange Act of  
 18 1934. The PSLRA modified Rule 9(b)’s particularity requirement, “providing that a  
 19 securities fraud complaint [must] identify: (1) each statement alleged to have been  
 20 misleading; (2) the reason or reasons why the statement is misleading; and (3) all facts on  
 21 which that belief is formed.” 15 U.S.C. § 78u-4(b)(1); see *In re Silicon Graphics Inc.*  
 22 *Sec. Litig.*, 183 F.3d 970, 996 (9th Cir.1999). The statute requires that, in pleading that  
 23 each allegedly misleading statement or omission was made with scienter, the plaintiff  
 24 “state with particularity ... facts giving rise to a strong inference that the defendant acted  
 25 with the required state of mind.” 15 U.S.C. § 78u-4(b)(2). If the complaint does not  
 26 contain such allegations, it must be dismissed. 15 U.S.C. § 78u-4(b)(3)(A).”

27 *Scripsamerica, supra*, pp. 1157-1158.

1 Simply, Plaintiff's vague generalities and conclusory statements do not suffice. Dismissal  
2 under Rule 12(b)(6) and Rule 9(b) are appropriate, under controlling authorities.

3 5. CONCLUSION.

4 Dismissal is proper, whether for lack of constitutional standing, or for failure to plead a  
5 claim under Rule 12(b)(6) and Rule 9, and under the heightened pleading requirements for an  
6 alleged securities law violation. No reason exists to believe that Plaintiff can amend the  
7 complaint to state a proper claim. Finally, if the court determines that subject matter jurisdiction  
8 does not exist, then the case ought to be dismissed without leave to amend.

9 Date: July 24, 2023 Respectfully Submitted,

10 /s/ Fred Hickman

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13 for: Defendant Steve Weera Tonasut

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